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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 JEFFERSON A. MCGEE,
12 Plaintiff,

No. CIV.S-04-2598 LKK DAD PS

13 v.

FINDINGS AND RECOMMENDATIONS

14 ARNOLD SCHWARZENEGGER,
15 et al.,
16 Defendants.
17 _____/

18 This matter came before the court on August 19, 2005, for
19 hearing on the following defense motions: (1) defendants Arnold
20 Schwarzenegger and Bill Lockyer's motion to dismiss for insufficient
21 service of process pursuant to Federal Rule of Civil Procedure
22 12(b)(5) and failure to state a claim under Rule 12(b)(6); (2)
23 defendant Jerry Meyer's motion to dismiss pursuant to Rule 12(b)(6);
24 (3) defendants City of Sacramento, Heather Fargo, Bonnie Pannell,
25 Robbie Waters, Albert Najera, and Officer Bailey's motion to dismiss
26 pursuant to Rule 12(b)(6); and (4) defendants County of Sacramento,
Lou Blanas, Jan Scully and Albert Locher's motion to dismiss under

1 Rule 12(b)(6). Plaintiff, proceeding pro se, appeared on his own
2 behalf. Tamara L. Morgan appeared on behalf of defendants
3 Schwarzenegger, Lockyer and Meyer. Gerald Hicks appeared on behalf
4 of the City of Sacramento defendants. Robert Chalfant appeared on
5 behalf of the County of Sacramento defendants. There was no
6 appearance on behalf of defendant James Stinson, who also has not
7 moved to dismiss.

8 Having considered all written materials submitted in
9 connection with the motions, and after hearing oral argument, for the
10 reasons explained below the undersigned will recommend that
11 defendants' motions to dismiss pursuant to Rule 12(b)(6) be granted
12 and that this action be dismissed as to all defendants¹ without
13 further leave to amend.

14 Pursuant to Federal Rule of Civil procedure 12(b)(6) a
15 complaint, or portion thereof, should only be dismissed for failure
16 to state a claim upon which relief can be granted if it appears
17 beyond doubt that the plaintiff can prove no set of facts in support
18 of the claim or claims that would entitle him to relief. Hishon v.
19 King & Spalding, 467 U.S. 69, 73 (1984) (citing Conley v. Gibson, 355

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21 ¹ The court "may properly on its own motion dismiss an action
22 as to defendants who have not moved to dismiss where such defendants
23 are in a position similar to that of moving defendants or where
24 claims against such defendants are integrally related." Silverton v.
25 Dep't of Treasury, 644 F.2d 1341, 1345 (9th Cir. 1981); see also Omar
26 v. Sea-Land Service, Inc., 813 F.2d 986, 991 (9th Cir. 1987) ("Such a
dismissal may be made without notice where the plaintiff cannot
possibly win relief."). The court's authority in this regard
includes sua sponte dismissal as to both defendants who have not been
served and those who have not yet answered or appeared. See Ricotta
v. State of California, 4 F. Supp. 2d 961, 978 (S.D. Cal. 1998); Bach
v. Mason, 190 F.R.D. 567, 571 & n.7 (D. Idaho 1999) (Garcia, J.).

1 U.S. 41 (1957)); Palmer v. Roosevelt Lake Log Owners Ass'n, 651 F.2d
2 1289, 1294 (9th Cir. 1981). In reviewing a complaint under this
3 standard, the court must accept as true the allegations of the
4 complaint. Hosp. Bldg. Co. v. Rex Hosp. Trs., 425 U.S. 738, 740
5 (1976). Furthermore, the court must construe the pleading in the
6 light most favorable to the plaintiff, and resolve all doubts in the
7 plaintiff's favor. See Jenkins v. McKeithen, 395 U.S. 411, 421
8 (1969). In a case where the plaintiff is pro se, the court has an
9 obligation to construe the pleadings liberally. Bretz v. Kelman, 773
10 F.2d 1026, 1027 n.1 (9th Cir. 1985) (en banc). However, the court's
11 liberal interpretation of a pro se complaint may not supply essential
12 elements of a claim that are not pled. Pena v. Gardner, 976 F.2d
13 469, 471 (9th Cir. 1992); Ivey v. Bd. of Regents of Univ. of Alaska,
14 673 F.2d 266, 268 (9th Cir. 1982).

15 Having carefully reviewed plaintiff's amended complaint,²
16 the court has determined that it still fails to comply with Federal
17 Rule of Civil Procedure 8. While it is substantially shorter than
18 plaintiff's initial complaint, the nineteen-page amended complaint
19 is so vague and conclusory that the court remains unable to identify
20 the precise nature of plaintiff's claims. The amended complaint
21 appears to concern some sort of dispute between plaintiff and the
22 defendants involving the Valley Hi Sports Bar & Grill located at
23 7917 Bruceville Road in Sacramento. However, the exact nature and
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25 ² The operative pleading with respect to the instant motion is
26 the complaint filed on June 22, 2005 (Doc. no. 110). That pleading,
which is in fact plaintiff's amended complaint, appears to have been
inadvertently styled as a "second amended complaint."

1 parties to that dispute remain unclear. The amended complaint
2 contains only conclusory allegations such as assertions that
3 defendants have "refused to protect plaintiff's property"; "refused
4 to enforce a restraining order of the Superior Court of California";
5 "unlawfully tak[en] plaintiff's property"; "denied [plaintiff] equal
6 rights in licensing, and interfered with his business
7 relationships"; and "refused to provide for the health, safety,
8 peace, comfort, and convenience of plaintiff's person, property,
9 customers, and employees on the same and equal basis that they
10 provide for white citizens", for example. Moreover, without
11 explanation the amended complaint refers to a confusing array of
12 statutory provisions including 28 U.S.C. §§ 1981, 1982, 1983, 1985,
13 1986, 1988 as well as 42 U.S.C. § 2000, presumably in reference to
14 Title VII of the Civil Rights Act of 1964. Finally, the amended
15 complaint contains wide-ranging allegations of conspiracy and
16 violations of plaintiff's constitutional rights and prays for
17 hundreds of millions of dollars in monetary relief.

18 In the order dismissing plaintiff's complaint with leave
19 to amend, plaintiff was expressly advised that any amended complaint
20 must contain a short and plain statement of the grounds upon which
21 the court's jurisdiction depends and contain a short and plain
22 statement of the claim showing that plaintiff is entitled to relief.
23 See Fed. R. Civ. P. 8(a). He was advised that any amended complaint
24 must also give fair notice and state the elements of the claim
25 plainly and succinctly. Jones v. Community Redev. Agency, 733 F.2d
26 646, 649 (9th Cir. 1984). He was told that he must allege with at

1 least some degree of particularity overt acts which defendants
2 engaged in that support plaintiff's claim. Id. Plaintiff was
3 notified that an amended complaint must be complete in itself
4 without reference to any prior pleading and that in an amended
5 complaint, as in an original complaint, each claim and the
6 involvement of each defendant must be sufficiently alleged. He was
7 warned that any amended pleading which fails to provide the
8 necessary factual description would likely be dismissed.
9 Plaintiff's amended complaint fails to meet these requirements.

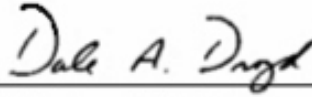
10 Having determined that plaintiff's amended complaint fails
11 to state a cognizable claim, the undersigned will recommend that the
12 it be dismissed. Given the nature of the deficiencies discussed
13 above, and considering that plaintiff already had an opportunity to
14 amend, it appears clear that plaintiff cannot cure the defects of
15 this action. Granting leave to amend would be futile. See Reddy v.
16 Litton Indus., Inc., 912 F.2d 291, 296 (9th Cir. 1990); Rutman Wine
17 Co. v. E. & J. Gallo Winery, 829 F.2d 729, 738 (9th Cir. 1987).
18 Therefore, the undersigned will recommend that the amended complaint
19 be dismissed with prejudice.

20 Accordingly, IT IS HEREBY RECOMMENDED that defendants'
21 motions to dismiss pursuant to Rule 12(b)(6) be granted as to all
22 defendants and that this action be dismissed without further leave
23 to amend.

24 These findings and recommendations are submitted to the
25 United States District Judge assigned to the case, pursuant to the
26 provisions of 28 U.S.C. § 636(b)(1). Within ten (10) days after

1 being served with these findings and recommendations, any party may
2 file written objections with the court and serve a copy on all
3 parties. Such a document should be captioned "Objections to
4 Magistrate Judge's Findings and Recommendations." The parties are
5 advised that failure to file objections within the specified time
6 may waive the right to appeal the District Court's order. See
7 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

8 DATED: August 22, 2005.

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11 DALE A. DROZD
12 UNITED STATES MAGISTRATE JUDGE

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